

REMARKS

At the outset, please find enclosed herewith a Declaration and Power of Attorney signed by both inventors, as requested by the Examiner in the October 4, 2005, Office Action. Entry of this document is respectfully requested.

Applicants have amended the claims as suggested by the Examiner to obviate the objection based on 37 C.F.R § 1.75(a) by adding appropriate language. Entry of these amendments is earnestly solicited.

The Examiner has rejected claims 1-12 under 35 U.S.C. § 103 (a) as being unpatentable over Ginsburg et al. (US Patent No. 4,413,979, hereinafter Ginsburg) in view of Jacobs et al. (US Patent No. 5,562,449, hereinafter Jacobs). Applicants respectfully traverse this rejection for the following reasons.

Ginsburg discloses a perform for molding custom dental impression trays. The primary (and sole) purpose of Ginsburg is to form impression of the patient's teeth, not to treat the teeth. The Ginsburg device is a sheet of uniform thickness that has a center section 12 and 14 with a handle 20, a first side 16 that has an edge contour adapted to fit the lingual musculature of the mouth and a second side 18 that has an edge contour shaped to fit the buccal tissue. The perform is described as being adaptable to fit any of the

four quadrants of the patients mouth. It is clear that sides 16 and 18 have different sizes, shapes and contours, and that Ginsburg's device can be inverted to fit the left or right side of the patient. There is no suggestion that one device could be made according to Ginsburg to contact all the teeth in one jaw of a patient. Once the perform has been placed on the quadrant of interest, it cools and, as noted on column 4, lines 14-15, can then be used in the manner "of any custom final impression tray." Thus Ginsburg's device is formed to fit a quadrant of the teeth of the patient, then removed, filled with an impression material and reinserted already formed as a tray. The impression is not taken on the Ginsburg tray but rather on the impression material in the manner of any custom final impression tray. This is in direct contrast to the claimed invention in which the tray is formed for treating a patient's teeth in the mouth and used that way. As best as can be seen from all the Ginsburg drawings and after a careful reading of the entire Ginsburg specification and claims, there is no suggestion that the Ginsburg device can be used to treat teeth by bleaching, fluoride applications, desensitizing teeth, antibacterial treatments and other dental operations.

The Examiner has stated, "note the raised edge adjacent 22 that forms a "bead" structure." This is in reference to claim 3, which calls for a bead as the element that is formed at the junction of the planar portion and the foldable portion. In reading Ginsburg, however, one sees that the Ginsburg device is designed to be inverted when used on one side of the mouth compared to the other side, and elements 12 and 14 represent two sides, so that the center

portion 12-14 is thicker than the sides 16 and 18. The “raised portion” cited by the examiner is in fact the thickness of the two sides 12-14, and not any form of element that can be described as a bead. Elements 22 in Ginsburg are grooves on both sides of the preform that facilitates movement of portions 16 and 18 in either direction as needed.

Before the Ginsburg preform 10 is used, it is flat. Only when it is to be inserted into one of the four quadrants is one side. When wall 16 is raised in either direction, such as in Fig. 4 or Fig. 5 of Ginsburg, it forms an outer wall. Thus the alleged “bead” near 22 is located on the outer wall.

In contrast, claims 1 and 7 call for the outer vertical wall to be formed as the device is made, not raised up when being used. Applicants have claimed a device that contacts all the teeth on one jaw of a patient, not one quadrant (or half a jaw) as taught by Ginsburg. Claims 1 and 7 recite a “single outer vertical wall on the outer edge of a planar portion” as part of the U-shaped portion. Ginsburg does not teach or suggest this language.

The Examiner has stated that Ginsburg “meets all the limitations of the independent claims 1 and 7, with the exception of the “U-shaped” configuration.” Ginsburg is said to disclose only half a U-shape. To correct this deficiency, the Examiner has cited Jacobs, stating that “To have extended the Ginsburg et al tray to extend to a full U-shape so that an entire jaw of the patient may be treaded

would have been obvious to one of ordinary skill in the art.” Applicants respectfully traverse this interpretation of Ginsburg.

Specifically, both Ginsburg and Jacobs are designed to take dental impressions. Ginsburg takes an impression of one quadrant rather than the whole jaw. If Ginsburg’s tray were to be modified to form a full U-shape, it would be unable to function as designed by Ginsburg because it could not be inverted. To frustrate the teachings of a reference to make an obviousness rejection is improper.

Jacobs takes an impression of the whole jaw by using a carrier tray 14 that holds the inner tray 12 because the inner tray 12 is not stable without the carrier tray 14. Jacobs does not teach or suggest that either side wall of either tray (more relevantly the inner tray) can have a foldable portion on the planar portion of a tray. The inner tray 12 of Jacobs is formed of a bottom 16 and two side walls 18 and 20. Side wall 20 cannot be described as a foldable portion on the inner edge of bottom 16 and there is absolutely no element for guiding the folding portion into forming an interior tray wall. Thus Jacobs fails to teach or suggest elements of claims 1 and 7, as does Ginsburg.

In summary, neither Ginsburg nor Jacobs teach treating teeth with the tray, and both teach forming impressions with an inner tray held by a carrier tray —14 in Jacobs and the device of Ginsburg when it is used in a conventional manner. Neither teach a device that has a single outer vertical wall on the outer edge unless the device also

has an inner wall, as claimed herein. Only when the inner wall is formed in Ginsburg is there an outer wall. Jacobs only shows the inner wall and the outer wall both being formed. Ginsburg does not permit a horseshoe U-shape of an entire jaw to contact all the teeth on that jaw because such a configuration would not be reversible and thus would frustrate the direct requirements of the reference.

It is respectfully requested that the Examiner reconsider the rejection and pass this application to issue. Favorable consideration is earnestly solicited. If the Examiner considers this case ready for conclusion, other than by allowance, he is respectfully requested to call Applicants attorney at the number listed below.


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